

A. G. Contract No.KR-93-1424-TRN  
ECS File: JPA-93-25  
Project: H 0861 03C  
Section: Red Mountain Freeway  
(Priest Dr.-McClintock Dr.)  
C94-203

**INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
THE CITY OF TEMPE

THIS AGREEMENT is entered into 3 November, 1994,  
pursuant to Arizona Revised Statutes, Sections 11-951 through  
11-954, as amended, between the STATE OF ARIZONA, acting by and  
through its DEPARTMENT OF TRANSPORTATION (the "State") and the  
CITY OF TEMPE, acting by and through its CITY COUNCIL (the  
"City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes  
Section 28-108 to enter into this agreement and has by  
resolution, a copy of which is attached hereto and made a part  
hereof, resolved to enter into this agreement and has delegated  
to the undersigned the authority to execute this agreement on  
behalf of the State.

2. The City is empowered by Arizona Revised Statutes  
Section 48-572 and City Charter Article 1, Section 3 to enter  
into this agreement and has by resolution, a copy of which is  
attached hereto and made a part hereof, resolved to enter into  
this agreement and has authorized the undersigned to execute  
this agreement on behalf of the City.

3. It is to the mutual advantage of the State and the  
City to landscape areas within the right of way on State Route  
202 at the following location:

From centerline roadway station 140+00 to centerline  
roadway station 295+00, a net distance of  
approximately 2.93 miles.

NO. <u>19126</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>11/03/94</u>
<u>Richard Mahoney</u> Secretary of State
By <u>Vicky Greenwood</u>

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State will:

a. Prepare landscape architectural plans for the landscaping and irrigation project in the State's right of way from Priest Drive to McClintock Drive with the exception of the area which has been identified as Wildlife Habitat (See Exhibit A) and submit them to the City for approval.

b. Construct the project, after City approval of the plans, using State funds.

c. Maintain the chain link fences, the landscaping and the irrigation system in the areas described under II.1.a., after construction, with the exception of those areas maintained by the City as described under II.2.e. and II.2.f. and will furnish all electrical power necessary to operate the State's irrigation system.

d. Construct the additional 6 foot height extension to the barrier between the east and west pedestrian structures under the RAM-600-5-513, Priest Drive to McClintock Drive Project, funding for this work is included in the City enhancement funds currently budgeted in the landscaping for this area. The City enhancement funds currently budgeted in RAM-600-5-516 will be reduced by the amount needed to construct the extension after State approval of the City's concrete barrier plan. Barrier plans shall make provisions for the installation of Tubular Frame Sign No. WB-29 needed in the construction of Project RAM-600-5-513.

e. Remove the existing chain link fence on the north side of the highway between the east and west pedestrian bridges and on the north side of the highway from the east pedestrian bridge easterly wherever there is an existing retaining wall six feet or higher.

f. Remove and relocate the existing chain link fence on the north side of the highway between the Mill Avenue Bridge and the west pedestrian bridge to ten feet behind the concrete barrier and install pedestrian gates on each end.

g. Coat all chain link fences and gates with Eonite or Permeon, at the City's request.

2. The City will:

a. Furnish and install necessary water services from water mains to the designated locations within the right of way at the State's expense.

b. Furnish all water for landscape installation during the construction phase, and all water thereafter necessary to properly maintain the landscape, all at City expense.

c. Prepare plans to raise the height of the concrete barrier from 2'-8" to 6'-0" on the north side of the highway between the east and the west pedestrian bridges.

d. Prepare landscape architectural plans for the landscaping and irrigation located between the Maintenance Control line and the State's north right-of-way line from Mill Avenue to College in the area known as the Wildlife Habitat (See Exhibit A) at the City's expense. After State approval of the plans, the project will be constructed by the City at the City's expense.

e. Maintain the irrigation system, after construction, described under II.2.d. and all other areas constructed by the State located between the Maintenance Control Line (Chain link fence, concrete barrier or retaining wall) and the State's right-of-way line, including all testing, adjusting, repairing, and operation of the irrigation system, and shall furnish all electrical power necessary to operate the irrigation system.

f. Maintain the landscaping described under II.2.d. and all other areas constructed by the State and located between the Maintenance Control Line (Chain link fence, concrete barrier or concrete retaining wall) and the State's right-of-way line. Maintenance shall include care of all landscaping in accordance with accepted horticultural practices, keeping all areas free of weeds, undesirable grasses and litter, applying irrigation water, furnishing and applying sprays and dust to combat diseases and other pests, pruning and replanting as required to maintain the landscaping as it was designed, and the repair of all erosion to maintain the final grade established at the completion of the project. The City will not make any changes, additions, or deletions without written approval of the State. All maintenance work shall be conducted in a manner to minimize traffic congestion and interference with through traffic. All traffic control will meet the requirements of the Arizona Department of Transportation's "Uniform Traffic Control Manual". Maintenance that requires traffic control on the State's highway shall require written approval from the State.

III. MISCELLANEOUS PROVISIONS

1. This agreement shall become effective upon filing with the Secretary of State.

2. The terms, conditions and provisions of this agreement shall remain in full force and effect for a period of five (5) years from the effective date, unless terminated earlier by mutual consent of the parties hereto or unless this agreement violates any Arizona law, rule or regulation, either now enacted or which may be enacted in the future. This agreement will be automatically renewed for successive periods of five (5) years unless either party shall give notice in writing to the other not less than one (1) month nor more than three (3) months prior to the initial or renewed expiration date. Further, this agreement may be terminated by the State at any time upon sixty (60) days written notice. It is understood and agreed, that, in the event this agreement is terminated by the CITY, the State shall in no way be obligated to maintain said landscaping.

3. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

4. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

5. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

6. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17 Avenue, Mail Drop 616E  
Phoenix, AZ 85007

City of Tempe  
Director of Public Works  
P. O. Box 5002  
Tempe, Arizona 85280

7. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement  
the day and year first above written.

CITY OF TEMPE

STATE OF ARIZONA

Department of Transportation

By Neil G. Giuliano  
NEIL G. GIULIANO  
Mayor

By Robert P. Mickelson  
ROBERT P. MICKELSON, P.E.  
Deputy State Engineer

Attest:

Helen R. Fowler  
Helen Fowler, City Clerk

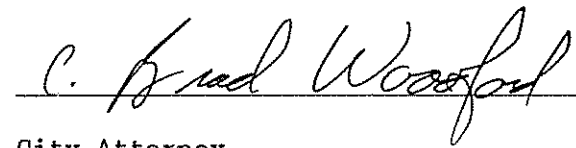
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08/02/93

APPROVAL OF THE TEMPE CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION and the CITY OF TEMPE, and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.


DATED this 16<sup>th</sup> day of Oct., 1994.

  
\_\_\_\_\_  
City Attorney

**CERTIFICATION**

I, Helen R. Fowler, City Clerk for the City of Tempe, Maricopa County, Arizona, do hereby certify the attached to be a true and exact copy of Resolution No. 94.55 passed and adopted at the Regular City Council Meeting of September 29, 1994, of the City of Tempe, Arizona.

Dated this 6th day of October, 1994.

  
Helen R. Fowler, CMC  
City Clerk

RESOLUTION NO. 94.55

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF TEMPE,  
ARIZONA, AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH  
THE STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION

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WHEREAS, it is to the mutual BENEFIT of the State of Arizona, Department of Transportation and the City of Tempe to enter into an agreement for design and construction of landscaping improvements along the Red Mountain Freeway from Priest Drive to McClintock Drive, and

WHEREAS, the Arizona Department of Transportation has prepared an agreement setting forth the responsibilities for design, construction, operation and maintenance for each party.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA, as follows:

That the Mayor of the City of Tempe is hereby authorized to execute an agreement with the State of Arizona, Department of Transportation setting forth the provisions and responsibilities for the design, construction, operation and maintenance responsibilities for the landscaping of the Red Mountain Freeway from Priest Drive to McClintock Drive.

PASSED AND ADOPTED BY THE CITY COUNCIL OF THE CITY OF TEMPE, ARIZONA

this 29th day of Sept., 1994.

Neil G. Giuliano  
Mayor

ATTEST:

Helen R. Dowler  
City Clerk

APPROVED AS TO FORM:

David R. Merkel  
City Attorney





STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

GRANT WOODS  
ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

MAIN PHONE : 542-5025  
TELECOPIER : 542-4085


INTERGOVERNMENTAL AGREEMENT  
DETERMINATION

A. G. Contract No. KR93-1424-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. §11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

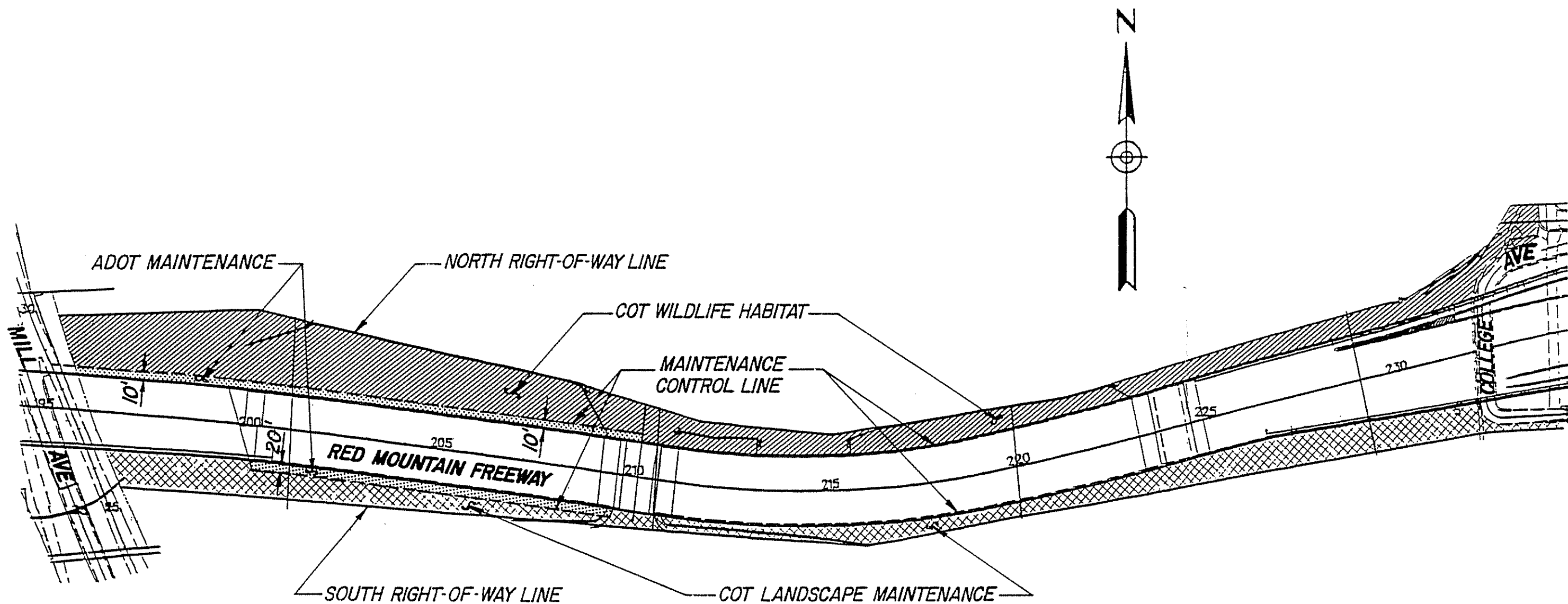
No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

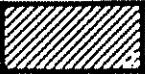

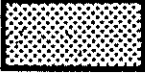
DATED this 27th day of October, 1994.

GRANT WOODS  
Attorney General

  
JAMES R. REDPATH  
Assistant Attorney General  
Transportation Section

JRR:lsr  
8661G



LEGEND	
COT WILDLIFE HABITAT MAINTENANCE	
COT LANDSCAPE MAINTENANCE	
ADOT LANDSCAPE MAINTENANCE	

ADOT - CITY OF TEMPE

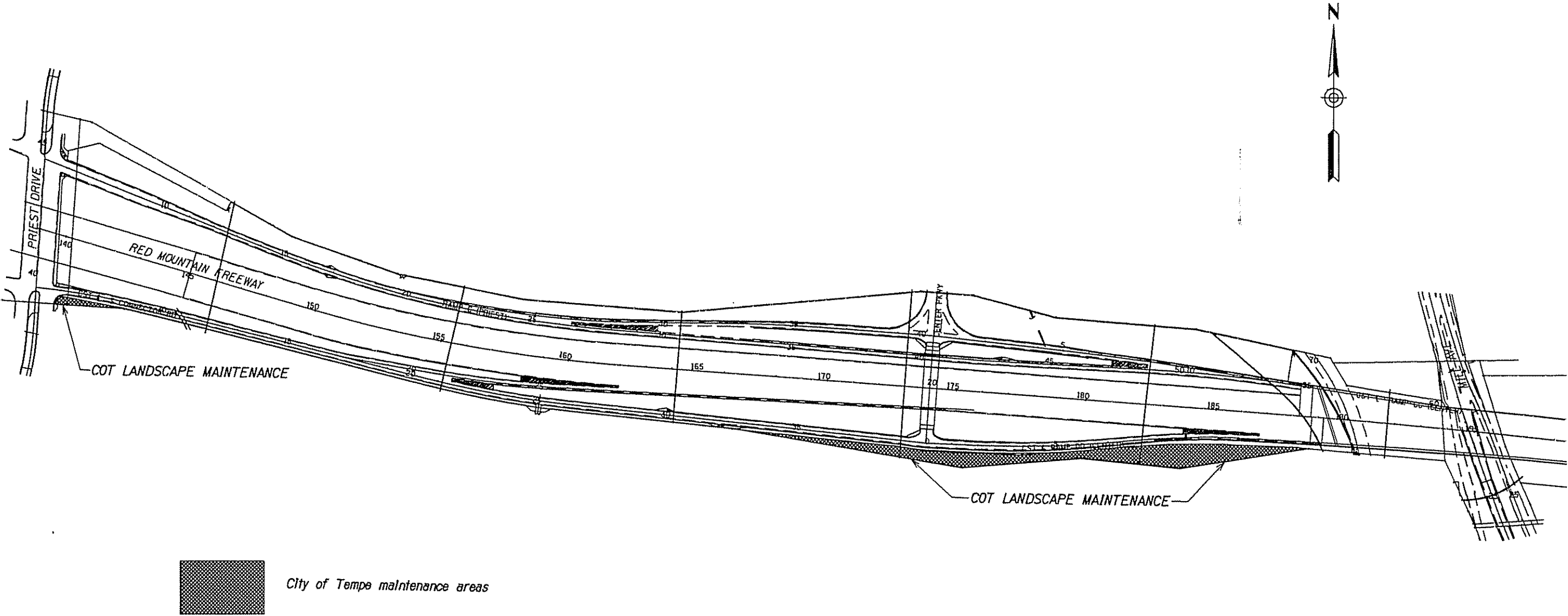
LANDSCAPE AGREEMENT

JPA 93-25

EXHIBIT A

SHEET 2 of 2

FJLWA REGION	STATE	PROJECT NO.	SHEET NO.	TOTAL SHEETS	AS BUILT
9	ARIZ.	RAM-600-5-516		79	
202L MA 006					



ADOT - City of Tempe  
Landscape Maintenance Agreement  
JPA 93-25

DESIGN	NAME	DATE	ARIZONA DEPARTMENT OF TRANSPORTATION HIGHWAYS DIVISION ROADSIDE DEVELOPMENT SERVICES
DRAWN		9/94	
CHECKED		9/94	
			EXHIBIT 'A'
			SHEET 1 of 2
PROJECT NO.	ROUTE	LOCATION	RED MOUNTAIN PRIEST-JCT. 101L
RAM-600-5-516	202		